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No.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

PAUL SILVER
AND
DONALD W. PARKER,
Petitioners

v.

JOHN C. BENSON JR., et al.,
Respondents

PETITION FOR WRIT OF CERTIORARI TO THE COMMONWEALTH COURT OF PENNSYLVANIA AND APPENDIX

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QUESTION PRESENTED

Petitioners, former township supervisors in rural Pennsylvania whose sole compensation was $25 a meeting, were surcharged $35,743.23 because they expended that amount of township funds to support and lobby for the passage of state legislation affecting the township's zoning procedures.[1] This occurred despite a subsequent finding by the trial court that they relied upon the opinion of counsel that the expenditures were lawful, and that petitioners acted "in good faith and without fraud . . . for what they thought was a proper township purpose." (A13) Therefore, the question presented here is:

Are municipal corporations, when speaking on matters concerning their governmental responsibilities, themselves endowed with First Amendment rights comparable to those possessed by private corporations under this Court's decision in *First National Bank of Boston v. Bellotti*?

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1. The names of the respondents are as follows:

John C. Benson, Jr., Norma Benson, George Collie, David A. Downs, Myron Fetch, Charles Frederick, Wilmer Frederick, J. Richard Huber, William G. Kane, John R. Morris, Elaine Morris, Alfred M. Simons, Anna C. Simons, William J. Warren, George E. Wiggins, John Yerkes and William H. Yerkes, III.

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PETITION FOR A WRIT OF CERTIORARI TO THE COMMONWEALTH COURT OF PENNSYLVANIA

Petitioners, Paul Silver and Donald W. Parker, respectfully pray that a writ of certiorari issue to review the judgment of the Commonwealth Court of Pennsylvania entered in the above matter.

OPINIONS BELOW

The Opinion and Order of the Commonwealth Court of Pennsylvania have been reported at 460 A.2d 904 (1983). For the Court's convenience, they are reprinted in the Appendix hereto at A1.

The Opinion and Order of the Court of Common Pleas of Bucks County, Pennsylvania, per the Honorable William Hart Rufe, III, have been reported at 39 Bucks Co. L.R. 146 (1982). They are also reprinted in the Appendix at A7. The "Additional Opinion" filed by the Honorable Edward G. Biester, Jr., of the Court of Common

Pleas of Bucks County was not made a part of the official report of this case. In order to present this Court with a complete record, it too has been reprinted in the Appendix at A15.

JURISDICTION

The Commonwealth Court of Pennsylvania affirmed the judgment of the trial court on June 6, 1983, and the Supreme Court of Pennsylvania denied a petition for allowance of appeal on October 17, 1983. This Court has jurisdiction under 28 U.S.C. §1257(3) to review the final judgment of the highest court of a state in which a decision could be had, which judgment results in the denial of a right protected by the First Amendment to the Constitution of the United States.

STATUTE AND CONSTITUTIONAL PROVISIONS INVOLVED

The statutory provision involved is Section 545 of the Second Class Township Code of the Commonwealth of Pennsylvania, 53 Pa. Stat. Ann. §65545 (Supp. 1983-1984), which provides in pertinent part:

> Any elected or appointed officer, whose act, error or omission has contributed to the financial loss of any township, shall be surcharged by the auditors with the amount of such loss, and the surcharge of any such officer shall take into consideration as its basis, the results of such act, error or omission and the results had the procedure been strictly according to law.

This case also involves the First Amendment to the Constitution of the United States, as applied to acts of the states by the Fourteenth Amendment.

STATEMENT OF THE CASE

This case arose when nineteen taxpayers of Buckingham Township, Pennsylvania, sought to personally surcharge two of three former elected supervisors because they approved the expenditure of township funds to support lobbying efforts for the passage of a state law directly affecting the township's zoning powers and procedures. The funds were spent for paper and postage, mileage reimbursement to testify at the state capitol, telephone calls, office equipment, secretarial services, a lobbying consultant, and an opinion letter from outside counsel about aspects of the proposed legislation. (R. 67a-68a at ¶1)[2]

That legislation had been introduced during a public controversy over the procedure for approving real estate development plans under current zoning laws. The issue had been litigated in the case of *Board of Supervisors of Buckingham Township v. Barness*, 33 Pa. Commw. 364, 382 A.2d 140 (1978), *cert. denied*, 439 U.S. 1116.[3] In response to the *Barness* decision and to place limits on the ability of private individuals to use the so-called curative amendment procedure to override local zoning and land use requirements, petitioners led an

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2. References designated "R. __" are to pages of the Reproduced Record in the Commonwealth Court. References designated "A__" are to pages of the Appendix hereto.

3. The controversy arose when Buckingham rejected private proposals, known as curative amendments, to develop land in a manner inconsistent with the township's 1951 zoning ordinance, defective as a result of a 1970 judicial decision. The township had already prepared and was holding hearings on a new comprehensive plan and zoning ordinance which would have cured those defects. Buckingham's position was that a township should have reasonable time within which to revise land use ordinances rendered defective by judicial action before having to implement the curative amendments of private parties seeking development inconsistent with the revised ordinance proposed by the township. This position was rejected in *Barness*, but was later adopted by the legislature in part as a result of the lobbying efforts at issue in this case. (A7-A8)

effort to secure passage of state legislation amending the curative amendment statute. (A7-A8) Many other municipalities as well as a statewide organization of township supervisors also supported this legislation. (R. 60a at ¶¶10, 12; 65a-66a at ¶¶6-8) Petitioners themselves kept their constituents informed of their efforts through periodic mass mailings and through a publicly advertised meeting attended by approximately 450 township residents held at the outset of the lobbying campaign. (R. 64a-65a at ¶5)

All of petitioners' acts in support of this lobbying campaign were done in their official capacities as elected supervisors who spoke and acted on behalf of the township. Township supervisors are only nominally compensated for their services, receiving $25 for each meeting of the Board of Supervisors which they attend. 53 Pa. Stat. Ann. §65515 (Supp. 1983-1984)

When the Buckingham Township Board of Auditors issued their annual report for 1978, they raised a question about the legal basis for the lobbying expenditures, but they voted unanimously not to surcharge the supervisors. (R. 67a at ¶10) The taxpayers then appealed the audit report by petition to the Court of Common Pleas of Bucks County. Petitioners raised the First Amendment issues asserted herein by way of affirmative defense in their answer to the taxpayers' petition, and they continued to press the constitutionally protected nature of Buckingham's lobbying activity at every level of the state court proceedings. (R. 15a at ¶25)

Following disposition of preliminary motions and rulings on the relevance of the parties' proposed factual stipulations, the trial court ordered surcharge of Silver and Parker jointly and severally in the amount of $35,743.23.[4] At the time it did this, the trial court ex-

4. Mr. Parker has filed for personal bankruptcy in the United States District Court for the Eastern District of Pennsylvania (Bankruptcy No. 81-04960-Chapter 7).

pressly found that petitioners did not profit financially from these expenditures and that they "acted in good faith and without fraud in spending township funds for what they thought was a proper township purpose." (A13) However, the trial court held that a municipal corporation had no grant of authority, express or implied, under any state law to expend public funds in support of the municipality's views on legislative issues and did not discuss the constitutional issue.

On appeal, the Commonwealth Court of Pennsylvania affirmed the court below. In doing so, it observed that under Section 148.2(ii) of the Lobbying Registration Act, which excepts employees of political subdivisions of the state from the registration requirements for lobbyists, 46 Pa. Stat. Ann. §148.2(ii)(c) (Supp. 1983-1984) [A17], not only do local government officials visit the state capitol to present the views of their communities, but that "this type of activity is in no sense evil or pernicious; in most cases, it is probably laudable." (A4) However, the court upheld the surcharge because it believed the expenditures were not properly budgeted.[5] In so ruling, the court took no account of the fact that the period within which state law permits amendments to a township's budget to be made had expired before the lobbying expenditures in question had been contemplated. Accordingly, it would have been impossible for petitioners to follow the procedure required by the Commonwealth Court.

With respect to the First Amendment claim, the Commonwealth Court stated:

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5. Contrary to the implication of the decision below, the funds spent for lobbying were not in excess of the amount the township expected to spend for the entire governmental function that year. Neither the township auditors nor the trial court found that total expenditures for fiscal year 1978 exceeded the amount properly budgeted for that year. No new taxes were necessary and no deficit was incurred. The funds were "unbudgeted" only in the sense that there was no line item allocated for lobbying.

> The taxpayers' action here, however, does not abridge the rights of the supervisors to speak their views on legislation or to seek redress of grievances; it is concerned instead with the unfettered expenditure by public officials who did not have any express or implied authorization for such expenditure. No one seeks to deny the supervisors their right to free speech; rather, it is merely argued that, if the supervisors wished to lobby in Harrisburg, they could have proposed such activity at a Township meeting, given the taxpayers of the Township notice of their plans, and sought a reasonable amount of funds for this purpose in the normal course of procedure.

(A5)

A petition for allowance of appeal seeking review by the Supreme Court of Pennsylvania was filed on July 6, 1983. The First Amendment claim raised here was raised in that petition. The petition was denied on October 17, 1983.

The effect of these state court rulings has been to restrict unconstitutionally the rights of municipalities, through their elected officials, to express their views and to expend municipal funds to do so. This has been accomplished by imposing the financial penalty of surcharge against the officials through whom a municipality must act.

REASONS FOR GRANTING THE WRIT

I. This Case Should Be Reviewed Because It Presents The Question Whether The First Amendment Rights Conferred On Private Corporations In *First National Bank Of Boston v. Bellotti* Apply To Municipal Corporations Whose Elected Officials Lobby On State Legislation Concerning Their Governmental Responsibilities.

This case, like *First National Bank of Boston v. Bellotti*, 435 U.S. 765, raises the important question whether speech protected by the First Amendment may be abridged because of the identity of the speaker. In holding that a statutory ban on certain political activity by business corporations was inimical to the First Amendment, this Court in *Bellotti* confirmed that if the speech is protected, the First Amendment protects both the right of the speaker to speak and the right of the public to hear. Mr. Justice Powell, writing for the majority, said:

> If the speakers here were not corporations, no one would suggest that the State could silence their proposed speech. It is the type of speech indispensable to decision making in a democracy, and this is no less true because the speech comes from a corporation rather than an individual. *The inherent worth of the speech in terms of its capacity for informing the public does not depend upon the identity of its source, whether corporation, association, union, or individual.*
>
> * * *
>
> [T]he First Amendment goes beyond protection of the press and the self-expression of individuals to prohibit government from limiting the stock of information from which members of the public may draw.

Id. at 777, 783 (emphasis added) (footnotes and citations omitted).

If the petitioners here were not speaking on behalf of municipal corporations, no one would suggest that the state could punish their speech. As the Chief Justice concluded in his concurring opinion in *Bellotti*:

> [T]he First Amendment does not "belong" to any definable category of persons or entities: It belongs to *all those* who exercise its freedom.

Id. at 802 (emphasis added).[6]

There can be little doubt that the lobbying efforts for which petitioners were penalized (which included communications with the citizens of the township, with other similarly situated townships, and with the state legislature) constitute speech that is specifically protected by the First Amendment. *See, e.g., Liberty Lobby, Inc. v. Pearson*, 390 F.2d 489, 491 (D.C. Cir. 1967) ("every person or group engaged . . . in trying to persuade [legislative] action is exercising the First Amendment right of petition") (Burger, J.); *cf. Thomas v. Collins*, 323 U.S. 516, 537 ("First Amendment is a charter for government. 'Free trade in ideas' means free trade in the opportunity to persuade to action"). Like the referendum question in *Bellotti*, the legislation here was a "matter of public concern . . . about which information [was] needed [and] appropriate." *See* 435 U.S. at 776 (quoting *Thornhill v. Alabama*, 310 U.S. 88, 101-02).[7]

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6. The concern expressed by three of the dissenting Justices in *Bellotti* is not implicated here. Unlike the referendum in *Bellotti*, which went beyond the business purpose of the private corporation, the penalized speech here was addressed to legislation relating to zoning, a statutorily defined responsibility of the township. 53 Pa. Stat. Ann. §65725.

7. The fact that money is spent to disseminate speech does not take the communication outside the realm of protected activity. "It is too late to suggest 'that the dependence of a communication on the expenditure of money itself operates to introduce a nonspeech element or to reduce the exacting scrutiny required by the First

Ironically, in according the protection of the First Amendment to petitioners' individual expression, the Commonwealth Court implicitly acknowledged that the communications constituted protected speech. (A5) Compounding the irony, the Commonwealth Court also recognized that local government officials do lobby the legislature on behalf of their local governments and observed that "this type of activity is in no sense evil or pernicious; in most cases, it is probably laudable." (A4) Yet, despite this apparent recognition that the speech is protected, the court affirmed the imposition of a personal monetary sanction against petitioners. In so doing, the Commonwealth Court effectively denied the protection of the First Amendment to the entity most directly interested and most able to speak — the township itself.

The result reached by the Commonwealth Court is further offensive to constitutional principle because the discrimination against municipal corporate speech, effected by the personal surcharge against municipal officials, has the concomitant effect of restricting the fund of information available to the public and, thereby, impermissibly burdens the public's right to know and to act upon that knowledge. *See, e.g., Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 756. Denying municipal officials the protection of the First Amendment when speaking on behalf of the municipality to its citizens and to the state legislature on proposed legislative action that directly affects the municipality's statutorily mandated responsibilities prevents a unique point of view from informing public discussion, debate, and decision-making on an important public issue. This serves only to limit the market of ideas and enhance the speech of opposing interests. *See First National Bank v. Bellotti, supra*, 435 U.S. at 777 n.12 (" 'speech concerning public affairs is more

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Amendment.' " *First National Bank v. Bellotti, supra*, 435 U.S. at 786 n.23 (quoting *Buckley v. Valeo*, 424 U.S. 1, 16).

than self-expression; it is the essence of self-government,' " which suffers when "competing views on public issues from 'diverse and antagonistic sources' " are suppressed).

In all probability, if the township is not permitted to speak in its own interest and that of its constituency through its duly elected officers, its point of view will not be heard. As a practical matter, it is unlikely that local officials who perform many hours of work on behalf of their townships for a nominal sum would be willing to finance personally an effective lobbying effort. Nor is it practical to assume that individual citizens will organize and speak out on issues affecting their collective interests as citizens of the municipality.[8] Furthermore, given the comparatively extensive resources of organized special interests, it seems clear that the voices of individual proponents of the township's interests would have difficulty gaining access to a market of ideas monopolized by an organized opposition. *See, e.g., Linmark Associates, Inc. v. Township of Willingboro*, 431 U.S. 85, 93 (serious question existed whether challenged ordinance left open " 'ample alternative channel of communication' ").

Denying municipal corporations a First Amendment right to speak through their officials unduly burdens the right of township citizens to hear how the business of the municipality is affected by judicial and legislative developments. The sweeping ruling by the Commonwealth Court penalized all of petitioners' lobbying activities without regard to the particular nature of the various communications. The state court's decision

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8. The seat of government, where so many decisions are made, is too remote to expect many citizens to travel there to present grievances to their government in person. Apart from such practical limits, many citizens rightfully believe that one of the functions of representative democracy is to select leaders who then speak for the interests of the community for a fixed time. Because citizens rely on public officials to fulfill this role, prohibiting lobbying by municipalities through those officials will greatly reduce the quantum of speech on important public issues.

would require the supervisors to reimburse the municipality for postage and telephone expenses arising from efforts to keep both the local citizenry and their statewide representatives informed about the impact upon the community of particular legislative programs and proposals. Local officials cannot respond, with any assurance of impunity, to direct inquiries from constituents or from state legislators with respect to the municipality's policy on a particular matter.

Finally, the substantial personal monetary penalty imposed upon petitioners will greatly impair future discussion and debate by municipal officials.[9] If this Court declines review, the judgment of the state court will stand as a significant inhibition upon both the number of speakers and the absolute quantum of speech addressing important questions concerning the powers and responsibilities of local government in Pennsylvania, and potentially across the country. Even if they act in good faith and with the advice of counsel as to the legality of their conduct, other municipal officials will think that they cannot undertake to communicate with their state legislature, other similarly situated municipalities, or even their own citizens regarding pending legislation without running some risk of personal financial responsibility. Under these circumstances, few if any local officials will risk speaking for the municipality.

Thus, the need for review of the federal constitutional question presented by this case is compelling and the time is ripe for this Court to apply the principles articulated in *Bellotti* to municipal corporations.

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9. Respondents have previously sought to minimize the impact of the penalty by referring *de hors* the record to insurance coverage. This does not dispose of the issues raised. First, the existence of insurance is irrelevant to analysis of the First Amendment. Second, the policy in question has a deductible provision which leaves a significant personal liability. Third, insurance companies may disclaim liability in some cases. Finally, the state court's ruling will apply to all municipalities, many of which may not maintain insurance covering these losses.

II. The Court Should Review This Case To Elucidate The Principles Governing The Interplay Between First Amendment Rights And State Law Governing The Conduct Of Municipal Corporations.

A. Because This Court Has Never Squarely Held That Municipal Corporations Have A First Amendment Right To Speak, The Statement By Three Justices Of This Court In City Of Boston v. Anderson Creates Doubt As To Whether And To What Extent The First Amendment Extends To Speech By Municipal Corporations.

City of Boston v. Anderson involved the same state referendum that was involved in *Bellotti*. The issue was whether the City of Boston should be enjoined from expending city funds to affect the outcome of the referendum. The Supreme Judicial Court of Massachusetts affirmed entry of the injunction. *Anderson v. City of Boston*, 376 Mass. 178, 380 N.E. 2d 628 (1978). On application to this Court for a stay of the state court judgment, Mr. Justice Brennan granted the application and entered the stay pending further action. *City of Boston v. Anderson*, 439 U.S. 951. A motion to vacate the stay order was denied with Justices Stevens, Stewart and Rehnquist dissenting. 439 U.S. 1389. The appeal was later dismissed for want of a substantial federal question. 439 U.S. 1060. Justices Brennan, Blackmun and Powell stated that they would note probable jurisdiction and set the case for oral argument.

The dismissal of the appeal in *Anderson* leaves unresolved the question of the First Amendment's application to municipal corporations. The remarks in the dissent from denial of the motion to vacate the stay can be read as leaving states free to impose any constraints on municipal corporations without regard to constitutional considerations.[10] Given the special place of the First

10. Mere status as a creature of the state or a regulated enterprise has not previously been thought to require such a result. *See*,

Amendment in our hierarchy of values, such a notion should not go unexamined.

B. Lacking Articulated Principles, The Commonwealth Court Applied An Unduly Restrictive Construction Of State Law In Conflict With The First Amendment.

The Commonwealth Court's attempt to recast the question before it as a simple matter of state budgeting law which does not implicate the First Amendment ignores the constitutional principles discussed above. Even if that opinion can be read as acknowledging the constitutional right of municipal officials to engage in such speech on behalf of the municipal corporation, the holding below still offends the First Amendment by unreasonably restricting the circumstances under which the municipality may speak.[11] Furthermore, because the right of a state to impose constraints of the type approved by the Commonwealth Court upon the exercise of a municipality's right to communicate with the state legislature itself implicates First Amendment questions, petitioners' failure to make specific provision in

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e.g., First National Bank v. Bellotti, supra, 435 U.S. at 778-79 n.14; *Consolidated Edison Co. v. Public Serv. Comm'n*, 447 U.S. 530, 534 n.1.

11. At issue in this case is the First Amendment right of the municipal corporation, not of the supervisors personally. The freedom of township officials to speak their own views has no bearing on the unconstitutional burden imposed on the municipality's ability to communicate its unique views to the legislature or the public's right to hear those views. To the extent the township may speak but not spend money to make that speech heard, the opinion rests on an incorrect assumption about the nature of First Amendment rights. *See* note 7 *supra*. On the other hand, to the extent the decision concedes only the free speech rights of township officials personally, it implicitly rejects the central premise of petitioners' argument — that municipal corporations, once created by the state, are themselves endowed with First Amendment rights comparable to those possessed by private corporations under this Court's decision in *Bellotti*.

Buckingham's 1978 budget for the township's lobbying effort cannot constitute adequate non-federal grounds for personally surcharging the supervisors.[12] Given the severe constraints imposed upon the budgeting process by applicable state law, requiring all lobbying to be anticipated and separately provided for in the township's annual budget constitutes an unconstitutional burden upon the exercise of municipal speech.

Under Section 902A of the Second Class Township Code, the proposed annual budget must be prepared, publicly advertised, made available for inspection for at least twenty days, amended if necessary and formally adopted no later than December 31st of the year preceding the budget year. 53 Pa. Stat. Ann. §65902A(1)-(2) (Supp. 1983-1984). (A19) Although Section 902.2 of the Code permits amendment of the budget "during the month of January," any amended budget "must" be publicly advertised, made available for inspection for a period of at least ten days, and adopted on or before February 15. 53 Pa. Stat. Ann. §65902.2 (Supp. 1983-1984). (A20) Therefore, unless an issue is foreseen before the end of January of the budget year, the budget cannot be amended and the township cannot communicate with the legislature on that issue during the balance of that year.[13] Where, as a practical matter, the issue is resolved before a new annual budget takes effect, the township

12. As this Court recently said in *Michigan v. Long*:

"where the non-federal ground is so interwoven with the [federal ground] as not to be an independent matter, or is not of sufficient breadth to sustain the judgment without any decision of the other, our jurisdiction is plain." *Enterprise Irrigation District v. Farmers Mutual Canal Company*, 243 U.S. 157, 164, 37 S. Ct. 318, 321, 61 L. Ed. 644 (1917).

103 S. Ct. 3469, 3474 n.4. The decision below does not contain the "plain statement" required by *Long* making clear that the state law grounds for decision are truly independent and not interwoven with federal law.

13. The unreasonableness of the restriction imposed by the decision below is dramatically illustrated by the facts of this case. *Barness* was decided on January 25, 1978. The public meeting to

will have been silenced, regardless of the importance of the issue to the community.[14]

This temporal restraint on communicative activity must be judged in light of the well settled principle that the scope within which states may restrict freedom of expression is extremely narrow.

> The government's ability to permissibly restrict expressive conduct is very limited: the government may enforce reasonable time, place, and manner regulations as long as the restrictions "are content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication."

United States v. Grace, 103 S. Ct. 1702, 1707 (quoting *Perry Education Ass'n v. Perry Local Educator's Ass'n*, 103 S. Ct. 948, 955). Measured by this standard, the conditions placed by Pennsylvania upon expressive conduct by municipal corporations do not pass constitutional muster, for those restrictions neither serve a compelling state interest nor leave open adequate alternative channels of communication.[15]

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discuss lobbying in support of the legislative response to that decision was not organized until March 21, 1978. (R. 64a-65a at ¶5) By that time, petitioners had no legal power to amend the 1978 budget to include lobbying expenses. The bill in question was enacted and signed into law by October 5, 1978, before the start of a new budget year. *See* 53 Pa. Stat. Ann. §10609.2. Hence, under the Commonwealth Court's decision, Buckingham would have been denied the right to speak on that issue.

14. Although neither the Commonwealth Court nor respondents referred to it, §902A(4) of the Second Class Township Code which permits "supplemental appropriations for any lawful purpose," 53 Pa. Stat. Ann. §65902A(4) [A19-A20], does not provide a means for petitioners to have avoided the strictures of the Code sections on budgeting. The thrust of the Commonwealth Court's opinion is that the township (as distinguished from the supervisors individually) did not have "express or implied authorization" under state law to lobby. (A5) Thus, any supplemental appropriation by the township would not have been for a "lawful purpose."

15. The state interests which concerned the Supreme Judicial Court in *Anderson v. Boston*, *supra* — the possible contamination of

CONCLUSION

The Commonwealth Court's holding in this case, if not reviewed and reversed by this Court, will chill the exercise of free speech on behalf of muncipalities. Municipal officials will be reluctant to speak knowing that petitioners were surcharged more than $35,000 for lobbying, that the lobbying related directly to the township's zoning concerns, and that the surcharge occurred even though the township solicitor endorsed the expenditure and the supervisors thought they were carrying out a proper township purpose. The public's right to know will also suffer with these constraints on fully informed debate. Such a result surely warrants review by this Court.

Respectfully submitted,

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January 16, 1984

NOTE — *(Continued)*
the electoral process by government efforts to influence a choice expressly reserved to the electorate — is not involved here. Legislative lobbying by municipal officials on behalf of the municipality differs, because it involves speech on behalf of the collective interest by already duly elected representatives, who may be removed at the next election should they cease to speak for the majority. Moreover, such speech is not directed to the electorate, but rather to the legislature, and concerns issues bearing on their duties as representatives.

APPENDIX

IN RE APPEAL FROM THE SETTLEMENT AND AUDIT OF THE AUDITORS OF BUCKINGHAM TOWNSHIP, BUCKS COUNTY ETC.

Appeal of Paul Silver and Donald W. Parker.

Commonwealth Court of Pennsylvania.

Argued April 5, 1983

Decided June 6, 1983

Before CRUMLISH, *President Judge*, and ROGERS, BLATT, CRAIG and MACPHAIL, *JJ*.

OPINION

BLATT, *Judge*.

The Buckingham Township Supervisors (supervisors) appeal here an order of the Court of Common Pleas of Bucks County which subjected them to a surcharge in the amount of $35,743.23[1] for monies unlawfully paid from Township funds. Section 545 of the Second Class Township Code (Township Code), Act of May 1, 1983, P.L. 103, *as amended*, 53 P.S. §65545.

It was stipulated that the supervisors, in their official capacities, approved[2] the expenditures here in question and that these expenditures were made in a successful effort to lobby before the state legislature for the passage of laws to amend various provisions of the Penn-

1. The monies were spent for legal fees, the services of a public relations firm, a registered lobbyist, a fund raiser, as well as expenditures to cover business machine rental fees, secretarial expenses, copying costs, postage, and telephone expenses. In addition to the hiring of the outside consultants, the record also indicates direct lobbying activities on the part of the supervisors.

2. Supervisor Julian Perry voted against these expenditures, and is therefore not subject to the surcharge here.

sylvania Municipalities Planning Code. Following the annual audit during which these expenditures came to light, several Township citizens (taxpayers) filed a surcharge petition in the common pleas court. That petition was successful and the supervisors now seek review here.

The supervisors argue first that the trial court erred in not quashing the taxpayers' appeal from the auditor's report because only one of the taxpayers had signed the recognizance. They note that Section 554 of the Township Code, 53 P.S. §65554, provides in pertinent part:

> No appeal by a registered elector or taxpayer or officer shall be allowed unless the *appellant* shall enter into recognizance to prosecute the same with effect, and to pay all costs accruing thereon, ... (Emphasis added.)

The supervisors, however, cite *Mayo's Appeal*, 315 Pa. 269, 172 A. 848 (1934) and *Monroe County Auditors' Report*, 319 Pa. 63, 179 A. 752 (1935), and contend that the recognizance is fatally defective and therefore, that the trial court was without jurisdiction to hear the matter. These cases cited, however, were decided under an older version of the statute, since repealed, which provided in pertinent part:

> *Any ten or more taxpayers of the county may*, in behalf of such county, appeal from the report of its county auditors or controller to the court of common pleas, or prosecute any suit or action in behalf of said county, or defend such county in any suit, process or action now pending, or that may be brought against such county, by appeals from county auditors' or controllers' reports or otherwise. If no appeal is entered by county officials, the appeal by such taxpayers shall be entered within ninety days after the filing of such report in the court of common pleas. The *appellants* shall enter into recognizance,

> with two sufficient sureties, conditioned that the appellate shall prosecute said appeal with effect, and pay all costs that may accrue thereon. . . .

Section 1035 of the General County Law, Act of May 2, 1929, P.L. 1278, *formerly* 16 P.S. §1035 (emphasis added). This former statute required 10 or more taxpayers to bring the appeal and it refers to "appellants"[3] in the plural. Section 554 of the Township Code, on the other hand, does not require any special number of taxpayers and employs the word "appellant" in the singular. We believe, therefore, that the recognizance here concerned complies with the Township Code and that the trial judge was correct, therefore, in not granting the supervisors' motion to quash.

The supervisors then argue that, inasmuch as Section 702 of the Township Code, 53 P.S. §65725 gives the Township the power to adopt and enforce zoning ordinances, their lobbying expenditures to promote zoning legislation in the General Assembly is a power that is necessarily implied from the express grant of the zoning power. *See Borough of Scottdale v. National Cable Television Corp.*, 476 Pa. 47, 381 A.2d 859 (1977). They do not cite to any Pennsylvania authority for this proposition, however, and we must agree with the trial judge, that, although the activities here concerned might ultimately affect the enforcement of the Township's zoning laws, it cannot be said, as a matter of law, that lobbying can, in any sense, be considered a power necessarily implied by the zoning power. And, as stated in *Kline v. Harrisburg*, 362 Pa. 438, 443-44, 68 A.2d 182, 184-85 (1949):

> Any fair, reasonable doubt as to the existence of power is resolved by the courts against its existence

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3. Note that the taxpayers were considered the appellants at the common pleas level.

in the [municipal] corporation, and therefore denied.

The supervisors argue further that, because Section 2(1) of the Lobbying Registration Act (Act), Act of September 30, 1961, P.L. 1778, 46 P.S. §148.2(ii)(C) excepts employees of political subdivisions of the Commonwealth, who act in an official capacity, from the registration requirements for lobbyists, hiring a lobbyist and lobbying otherwise was proper for them and will not make them subject to surcharge. Admittedly, local government officials do visit the State Capitol for the sake of presenting the views of their communities to the legislature, and this type of activity is in no sense evil or pernicious; in most cases, it is probably laudable. The expenditures here, however, were never budgeted and as the trial judge said in his opinion, they represented *24% of the total administrative costs* of the Township in 1978. We fail to see how Section 2(1) of the Act can be construed so as to support the supervisors' position. Again, where doubt exists, courts must resolve the issue of implied powers against the local government. *Kline*.

The Supervisors also argue that Section 209.1 of the Municipalities Planning Code (MPC), Act of July 31, 1968, P.L. 805, 53 P.S. §10209.1, which gives a locally-created planning agency certain powers, *inter alia*, "promoting public interest in, and understanding of, the comprehensive plan and planning", authorizes their conduct. As provided in Section 202 of the MPC, 53 P.S. §10202, members of the planning commission[4] may be reimbursed for necessary and reasonable expenses." The supervisors here, however, have not offered sufficient evidence to prove that the expenses they incurred were "necessary and reasonable". And, under Section 559 of the Township Code, 53 P.S. §65559, the burden

4. Pursuant to Section 201 of the MPC, 53 P.S. §10201, the supervisors assigned these powers to themselves as "members appointed from the governing body" of the Township.

of proof lies upon the official whose accounts are in question, to establish the validity of charges. The supervisors here have failed to meet their burden, and further, as suggested by the taxpayers, to allow such expenditures without proof of the neccessity and reasonableness of these charges, and not having them provided for by the budget, would effectively nullify the budgeting provisions of the Township Code.

Lastly, the supervisors challenge the surcharge on Constitutional grounds in that it is said to violate their First Amendment[5] right to petition for redress of grievances, the provisions of Art. I, §§7 and 20 of the Pennsylvania Constitution relating to free speech and to their right to petition, and their due process rights under the Fourteenth Amendment.[6] The taxpayers' action here, however does not abridge the rights of the supervisors to speak their views on legislation or to seek redress of grievances; it is concerned instead with the unfettered expenditures by public officials who did not have any express or implied authorization for such expenditure. No one seeks to deny the supervisors their right to free speech; rather, it is merely argued that, if the supervisors wished to lobby in Harrisburg, they could have proposed such activity at a Township meeting, given the taxpayers of the Township notice of their plans, and sought a reasonable amount of funds for this purpose in the normal course of procedure. Regarding the due process argument, this contention was never raised below and therefore cannot be considered here. *Brose v. Easton Parking Authority*, 44 Pa. Commonwealth Ct. 24, 403 A.2d 178 (1979).

We will affirm the order of the trial court.

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5. U.S. Const. amend. I.
6. U.S. Const. amend. XIV.

ORDER

AND, NOW, this 6th day of June, 1983, the order of the Court of Common Pleas of Bucks County in the above-captioned matter is hereby affirmed.

IN THE COURT OF
COMMON PLEAS OF BUCKS COUNTY

CIVIL

IN RE: APPEAL FROM THE SETTLEMENT AND AUDIT OF THE AUDITORS OF BUCKINGHAM TOWNSHIP, BUCKS COUNTY, PENNSYLVANIA, OF THE ANNUAL AUDIT AND FINANCIAL REPORT OF THE YEAR 1978	: NO. 79-6418-09-6

OPINION AND ORDER

RUFE, J., April 19, 1982.

In this appeal from Buckingham Township's Audit of 1978 brought by 19 citizens of Buckingham Township pursuant to Section 553 of the Second Class Township Code, 53 P.S. §65553, petitioners are seeking to surcharge respondent supervisors for lobbying expenses incurred by the Township in support of legislation during that year.

The facts stipulated and agreed by the parties establish that respondents Donald W. Parker and Paul Silver were duly elected supervisors of Buckingham Township holding office during 1978 when the challenged expenditures were made. They both approved, in their official capacities, the disbursements that are the subject of this appeal. The public funds at issue in the case, $35,743.23, were expended in connection with a successful effort to promote the passage of certain proposed legislation then pending in the Pennsylvania legislature under the designation "S.B. 1008." The purpose of the legislation was to amend the curative amendment provisions of the Pennsylvania Municipalities Planning Code in a manner affecting the zoning powers of local government bodies. The legislation amended the Municipalities Planning Code to require an affidavit by a person

filing a zoning challenge stating that the affiant had no knowledge of any proposed changes in municipal zoning before the application would be accepted. It grew out of and was introduced in direct response to the Pennsylvania Commonwealth Court's decision in the case of *Board of Supervisors of Buckingham Township v. Barness*, 33 Pa. Commonwealth Ct. 364, 382 A.2d 140 (1978), *cert. denied*, 439 U.S. 1116 (1979).[1]

In their successful support of S.B. 1008, the supervisors expended $35,743.23 of township funds, which expenditures were not included in the township's budget for 1978. Further, those expenditures represent 24% of the total administrative costs of the township for 1978, approximately 19% of the total governmental costs of the township for 1978, approximately 19% of the total costs for protection of persons and property for 1978, and approximately 24% of the total cost for police for 1978.

Section 545 of the Second Class Township Code, 53 P.S. §65545 provides, *inter alia:*

> Any elected or appointed officer, whose act, error or omission has contributed to the financial loss of any township, shall be surcharged by the auditors with the amount of such loss, and the surcharge of any such officer shall take into consideration as its basis, the results of such act, error or omission and the results had the procedure been strictly according to law.

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[1] In the *Barness* case, the Commonwealth Court held that the advertisement of a notice of the adoption of a new comprehensive plan was not sufficient notice of the pendency of curative zoning legislation to challenging property owners. The Court denied the Board of Supervisors' contention that the landowners were "racing" new township zoning regulations as there was no advertisement of a proposed new zoning regulation when the challenges to the existing invalid ordinance and requests for curative amendments were filed.

Further, Section 559, P.S. §65559, provides that the accounts in question may be investigated de novo and the figures and facts found and stated by the auditors shall be taken as prima facie correct as against any such offer. In addition, Section 559 provides that the burden shall be upon each officer, whose accounts are in question, to establish the validity of the credits which he claims. *Appeal from Hazle Township Audit 1957*, 50 Luz. L. R. 69 (1969).

Petitioners basically raise two grounds supporting their surcharge petition. First, petitioners contend the amounts expended were not included in the budget for 1978 as required under Section 902 of the Second Class Township Code, 53 P.S. §65902. Therefore, the supervisors had no authority to spend the funds, even if for a proper purpose, hence surcharge is proper. Second, petitioners allege that respondents had no authority to expend the township funds for lobbying purposes, either under the Municipalities Planning Code or the Second Class Township Code, therefore a surcharge must be imposed.

As to petitioners' first contention, it is well settled that township supervisors will not be surcharged under Section 902 merely for authorizing expenditures in excess of the amount budgeted. *In re: Falls Township Audit*, 53 D.&C. 2d 705 (1971). In that opinion by Judge Bodley, this Court held that the amendments to Section 902 enacted July 10, 1947, P.L. 1481, sec. 11, and April 20, 1949, P.L. 634, sec. 1, made it clear that a budget is simply that: namely, a fiscal projection based upon past experience and upon anticipated future occurrences. The 1949 amendment stated that a budget should "reflect *as nearly as possible* the estimated revenues and expenditures . . . ." The court held that this is all that is every humanly possible. Merely showing spending in excess of the budget will not justify a surcharge. It must be shown that either the supervisors committed fraudu-

lent, collusive or dishonest acts, or the money was spent for other than proper township purposes. *Id.*

The crucial issue in this case is whether the expenditures of $35,743.23 for lobbying expenses were properly made within the respondents' authority as defined by the Second Class Township Code or under any other color of authority. While no Pennsylvania cases were found addressing the issue, we believe we can decide this case under the total scheme of the Second Class Township Code.

Generally, a municipal corporation is a creature of the sovereign and possesses only those powers granted in express words, and, those activities which the legislature has placed within its power. *Matter of Arbitration Between Borough of Ambridge and Police Department*, ____Pa. Commonwealth Ct. ____, 417 A.2d 291 (1980); *Golding v. New Britain Township*, 33 Pa. Commonwealth Ct. 635, 382 A.2d 509 (1978). Further, in *Warminster Township Auditors Report*, 22 Bucks Co. L. Rep. 143 (1972), affirmed 8 Pa. Commonwealth Ct. 163, 302 A.2d 859 (1973), Judge Monroe held:

> Nothing is better settled than that a municipal corporation does not possess and cannot exercise any other than the following powers: (1) those granted in express words; (2) those necessarily or fairly implied in or incident to the power expressly granted; (3) those essential to the declared objects and the purposes of the corporation, not simply convenient but indispensable. *Lesley v. Kite*, 192 Pa. 268, 274, 43 A.1102 (1899); *St. Joseph Lead Co. et al. v. Potter Township*, 398 Pa. 361, 364, 157 A.2d 638 (1959); *Com. v. Hanzlik*, 400 Pa. 134, 136, 161 A.2d 340 (1960); *Chapman v. Vandergrift Borough*, 26 Dist. Rep. 301 (1916). *Id.* at 153.

In addition, any fair and reasonable doubt as to the existence of power is resolved by the courts against the existence of that power in the corporation and is therefore

denied. *Knauer v. Commonwealth*, 17 Pa. Commonwealth Ct. 360, 332 A.2d 589 (1975); *Pettit v. New Britain Twp.*, 28 Bucks Co. L. Rep. 80 (1975).

In the instant matter, for the most part, the facts are undisputed. The significant question before the court relates to the legal consequences of the supervisors' acts and whether or not they were in strict conformance with the law, so as to make them liable for surcharge. *Cotlar v. Warminster Township*, 8 Pa Commonwealth Ct. 163, 302 A.2d 859 (1973). Respondents contend that although there is no express authority conferred in the Second Class Township Code, the expenditures are justified as incident to various powers expressly stated in the Code.

Respondents cite Section 725 of the Second Class Township Code, 53 P.S. §65725 for this proposition. Section 725 grants the township the power to adopt and enforce zoning ordinances, regulating the location, construction, and use of buildings, the size of courts and open spaces, the density of population, and the use of land. We cannot conceive how this impliedly authorizes the expenditure of township funds for lobbying purposes, even if the proposed legislation does remotely affect the enforcement of zoning ordinances.

Further, respondents contend that Section 610 of the Code, 53 P.S. §65610, which authorizes the formation of a State Association of Township Supervisors, justifies the expenditures for lobbying. The Association functions include advancing the interest of and betterment of township government in townships of the second class. Article II, Section 6, of the Association's By-Laws provides that one of the purposes of the Association is to secure from the General Assembly legislation which will enable Township Government to function more efficiently. The Second Class Township Code provides for the payment of dues to the Association by the township. We agree with the respondents that this section evidences the intent of the legislature to

encourage the involvement of local governmental bodies in shaping policies. However, we also hold that the legislative intent was to limit the lobbying involvement of local governmental bodies to that provided in the Code, that is, to the lobbying activities of the Association. The record establishes that the Township paid dues to the Association which then presumably applied the dues toward Association expenses, among which were lobbying.

We consider as further evidence of the legislative intent, the fact that there is no further authority in the Code, whether express or implied, for the expenditures in question. In direct contradiction to this situation is the fact that the Code otherwise goes into great detail to dictate those circumstances in which expenditures may be made by the township. For example, specific sections dictate when township funds may be spent for street lights, fire hydrants, fire fighting equipment, construction of ponds, Memorial Day appropriations, garbage collection, traffic control devices, etc. We hold that with such specific and detailed statutory instructions, the Pennsylvania legislature has dictated what township funds may be spent for. No such authority for lobbying expenditures is either expressly stated or can be fairly implied in the powers granted in the Code. Further, we hold that no such power is incidental or indispensable to the powers granted or to the objects and purposes of the township. Without such authority, the supervisors were acting improperly in making the expenditures and surcharge is proper.

Surcharge has been imposed in cases in which supervisors have had a much more colorable claim to legislative authority for their actions. In *South Union Twp. Board of Auditors v. South Union Twp. Board of Supervisors*, 75 D.&C.2d 324 (1976), the court held that while supervisors of a second class township are authorized to contract with an insurance company for payment of premiums to purchase annuities, payment of an amount directly to an employee to enable him to provide

a pension in such manner as he himself should determine, was beyond their power, and surcharge was proper. The court held that even though the money might have been used for the purpose for which it was intended, the supervisors had no authority to make a direct distribution.

In *Warminster Township Auditors' Report*, 22 Bucks Co. L. Rep. 143 (1972), affirmed 8 Pa. Commonwealth Ct. 163, 302 A.2d 859 (1973), supervisors claimed that they had authority under the Code to engage themselves as compensable township employees in the general conduct of the business of the township. The court held that the supervisors had no authority to vote themselves and receive the additional compensation as township employees since their compensation was limited to that provided by statute. The court concluded that since the supervisors acted without authority, a surcharge was proper, despite the fact that the supervisors acted entirely in good faith and there was no financial loss to the township.

We believe the supervisors here acted in good faith and without fraud in spending township funds for what they thought was a proper township purpose. However, their acts were unlawful in nature and they must remit to the township the funds so expended.

The amount of the surcharge, $35,743.23, is taken directly from Footnote #1 of the report of the Board of Auditors. The footnote computes the surcharge as follows:

Consulting Services	$36,565.95
Buckingham Day Expenses (Fundraiser to defray costs of lobbying)	4,495.28
	$42,061.23
Less Revenues Received By Township for Buckingham Day	6,318.00
NET DUE TOWNSHIP	$35,743.23

Section 559 of the Second Class Township Code, 53 P.S. §65559, provides that the figures found and stated by the auditors in their report shall be taken as prima facie correct as against any such officer and the burden shall be upon each officer to establish the validity of the credits which he claims. We hold that as the respondents have failed to meet their burden of proof by contradicting this figure, the amount above stated is true and correct.

Accordingly, we enter the following:

ORDER

AND NOW, this 19th day of April, 1982, it is hereby ORDERED and DECREED that Donald W. Parker and Paul Silver are subject to surcharge jointly and severally in the amount of $35,743.23 for monies unlawfully paid from the funds of Buckingham Township.

The prothonotary is directed to enter judgment in favor of the Township of Buckingham and against Donald W. Parker and Paul Silver in the amount of $35,743.23.

By the Court,

/s/William Hart Rufe, III, *J.*

[Appealed to Commonwealth Court.]

IN THE COURT OF
COMMON PLEAS OF BUCKS COUNTY

CIVIL

IN RE: APPEAL FROM THE	:	NO. 79-6418
SETTLEMENT AND AUDIT OF THE	:	
AUDITORS OF BUCKINGHAM	:	
TOWNSHIP, BUCKS COUNTY,	:	
PENNSYLVANIA, OF THE ANNUAL	:	
AUDIT AND FINANCIAL REPORT OF	:	
THE YEAR 1978	:	

ADDITIONAL OPINION

I do not condone the actions of the supervisors in question. I also find that Judge Rufe's thorough analysis accurately follows present statutory and case law authority. However, I am concerned that the procedures required by that statutory and case law by which surcharge has been imposed in this case are constitutionally infirm or at the very least implicate constitutional questions of due process which the parties have inadequately addressed.

Consider the procedure required under the act and case authority in light of the circumstances of this case. The burden of proof and persuasion as to the validity of the expenditures is upon the supervisors. Their good faith, including reliance upon the Township's duly appointed solicitor, counts for absolutely nothing. It is conceded that their sole purpose was to benefit the Township. Their efforts were ultimately successful and no one has urged that they were not beneficial to the Township. No fraud is alleged and no financial benefit was received by them. Nonetheless in an action the Commonwealth Court has determined[1] to be "civil" and "remedial" in

1. *In re Appeal From Report of Audit of South Union Township for 1975. Appeal of Auditors of South Union Township v. Nicholas Komanecky and James Conway. Appeal of Auditors of South Union Township,* Pa. Commonwealth Ct. , 407 A.2d 906 (1979).

nature and in which they have no right to a trial by jury, they are required to pay $35,743.23 to the Township in the nature of a surcharge. The amount of surcharge obviously goes beyond personal financial inconvenience perhaps to the point of bringing about the financial ruin of the surcharged supervisors.

No matter how the action may be *characterized*, the *consequences* amount to a penalty including loss of property for improper conduct in making expenditures unauthorized by law. Under those circumstances elemental fairness and constitutional due process require that those who seek surcharge bear the burden of proof and persuasion rather than the supervisors against whom surcharge is sought. There may be other procedural due process problems as well, as, for example, the unavailability of any good faith defense. Additionally, the procedures in surcharge apparently do not permit the joinder of more directly responsible parties such as, in this instance, the Solicitor who advised that the expenditure could be legally made.

I regret that I am constrained to file this opinion. I believe Judge Rufe's analysis is quite consistent with statutory and case law. I realize that the constitutional issues which this opinion raises have not been adequately addressed by the parties. I appreciate that our Court must be prudent and cautious in raising constitutional issues sua sponte, and that doing so is discouraged by our appellate courts. Nonetheless, I do not believe that we can be insensitive to the requirements of due process in light of the draconian results in this case.

_____

Edward G. Biester, Jr. *J.*

Dated:

Commonwealth of Pennsylvania
Lobbying Registration Act

46 Pa. Stat. Ann. §148.2 (Supp. 1983-1984). Definitions.

"Lobbyist" means any natural person who:

(i) Is employed or engaged for compensation, by any other person or any partnership, committee, association, corporation or any other organization to lobby.

(ii) Makes expenditures or incurs obligations on behalf of any one person he represents in excess of three hundred dollars ($300) in any calendar month except that a natural person shall not be considered a lobbyist when he:

(A) Formally communicates with or formally presents testimony before an agency of the Commonwealth or the General Assembly.

(B) Testifies before a committee of the General Assembly.

(C) Is an officer, official or employe of the Commonwealth of Pennsylvania or any political subdivision thereof and is acting in his official capacity.

Commonwealth of Pennsylvania
Municipalities Planning Code

53 Pa. Stat. Ann. §10201 (1972). Creation of planning agencies.

The governing body of any municipality shall have the power to create or abolish, by ordinance, a planning commission or planning department, or both. An ordinance which creates both a planning commission and a planning department shall specify which of the powers and duties conferred on planning agencies by this act; [punctuation sic] each shall exercise and may confer upon each additional powers, duties and advisory func-

tions not inconsistent with this act. In lieu of a planning commission or planning department, the governing body may elect to assign the powers and duties conferred by this act upon a planning committee comprised of members appointed from the governing body. The engineer for the municipality, or an engineer appointed by the governing body, shall serve the planning agency as engineering advisor.

53 Pa. Stat. Ann. §10202 (1972). Planning Commission.

If the governing body of any municipality shall elect to create a planning commission, such commission shall have not less than three nor more than nine members. All members of the commission shall serve without compensation, but may be reimbursed for necessary and reasonable expenses. However, elected or appointed officers or employes of the municipality shall not, by reason of membership thereon, forfeit the right to exercise the powers, perform the duties or receive the compensations of the municipal offices held by them during such membership.

53 Pa. Stat. Ann. §10209.1 (1972 & Supp. 1983-1984). Powers and duties of planning agency.

(b) The planning agency at the request of the governing body may:

. . .

(8) Promote public interest in, and understanding of, the comprehensive plan and planning;

(9) Make recommendations to governmental, civil and private agencies and individuals as to the effectiveness of the proposals of such agencies and individuals.

Commonwealth of Pennsylvania
Second Class Township Code,
Article IX, Taxation and Finance

53 Pa. Stat. Ann. §65902 (1957 & Supp. 1983-1984). Annual Budget.

A. (1) The board of township supervisors shall annually, at least thirty days prior to the adoption of the annual budget begin preparation of a proposed budget for all funds or annual estimate of revenues and expenditures for the ensuing fiscal year, beginning on the first day of January, which shall be filed with the treasurer. Said budget shall reflect as nearly as possible the estimated revenues and expenditures of the township for the year for which the budget is prepared. . . .

(2) Upon the preparation of the proposed budget, the supervisors shall give public notice by advertisement once in at least one newspaper of general circulation in the township or county that the proposed budget will be available for public inspection at a designated place in the township. After the budget has been available for public inspection for twenty days the supervisors shall, after making such revisions therein as appear advisable, adopt the budget not later than the thirty-first day of December and the necessary appropriation measures required to put it into effect.

. . .

(4) The supervisors may at any time by resolution make supplemental appropriations for any lawful purpose from any funds on hand or estimated to be received within the fiscal year and not otherwise appropriated, including the proceeds of any borrowing authorized by law. Such supplemental appropriations may be made whether or not an appropriation for the same purpose was included in the original budget as adopted, except that no supplemental appropriation shall be made for any purpose in respect to which the court on an appeal

pursuant to section nine hundred eight of this act has ordered a specific reduction or elimination of an item of the original budget for the same purpose.

53 Pa. Stat. Ann. §65902.2 (Supp. 1983-1984). Amending budget; notice.

During the month of January next following any municipal election, the supervisors of any township may amend the budget and the levy and tax rate to conform with its amended budget. A period of ten days' public inspection at the office of the township secretary of the proposed amended budget after notice by the township secretary to that effect is published once in a newspaper as provided by section 110 of this act shall intervene between the proposed amended budget and the adoption thereof. Any amended budget must be adopted by the township supervisors on or before the fifteenth day of February. . . .